

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

NOAH SHERMAN SCHRODER,

Petitioner,

v.

MARION FEATHER,

Respondent.

Case No. 3:15-cv-00134-ST

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Janice M. Stewart issued Findings and Recommendation in this case on April 21, 2015. Dkt. 10. Judge Stewart recommended that the Court deny the Petition for Writ of Habeas Corpus filed by Noah Sherman Schroder (“Petitioner”), Dkt. 1, and enter a judgment dismissing this case with prejudice.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate’s findings and recommendation, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate's findings and recommendation to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (the court must review *de novo* magistrate's findings and recommendation if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendation for "clear error on the face of the record."

Petitioner timely filed an objection. Dkt. 13. Petitioner argues that Judge Stewart's finding that there was "ample evidence" that Petitioner refused to take a breathalyzer test was erroneous. The Court has reviewed *de novo* those portions of Judge Stewart's Findings and Recommendation to which Petitioner has objected, as well as Petitioner's objections. The Court agrees with Judge Stewart's reasoning and conclusion and ADOPTS those portions of the Findings and Recommendation.

For those portions of Judge Stewart's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court ADOPTS Judge Stewart's Findings and Recommendation. Dkt. 10. The Court DENIES the Petition for Writ of Habeas Corpus, Dkt. 1, and DISMISSES this case with prejudice.

IT IS SO ORDERED.

DATED this 28th day of May, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge